



April 5, 1999

Ms. Tenley A. Aldredge  
Assistant County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

OR99-0903

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 123157.

The Travis County Attorney's Office (the "county attorney") received a request for various identified records, which were discussed at an interview with the requestor's client on December 15, 1998. In response to the request, you submit to this office for review the information which you assert is responsive. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. In addition, you also assert that the requested information is not subject to the act pursuant to section 552.003 of the Government Code. We have considered the arguments and exceptions you raise and reviewed the submitted information.

Initially, we address your contention that the requested documents are not subject to the act pursuant to section 552.003(1)(B), as they are records of the grand jury, and thus records of the judiciary. The act does not apply to information within the actual or constructive possession of the grand jury. Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information prepared or collected by the agent is within the grand jury's constructive possession.<sup>1</sup> *Id.*

You assert that "[a]ll of the documents requested by [the requestor] were obtained by the County Attorney's Office pursuant to a grand jury subpoena for purposes of that office's criminal investigation." Information obtained pursuant to a grand jury subpoena issued in

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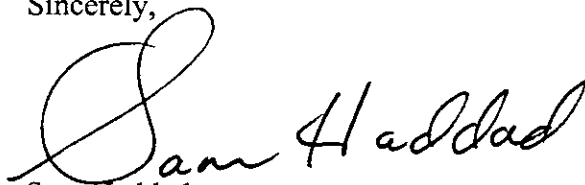
<sup>1</sup>Information not held or maintained in this manner is not exempt from the act's coverage and may be withheld only if one of the act's specific exceptions applies to the information. See Open Records Decision No. 513 (1988).

connection with this investigation is within the grand jury's constructive possession and is not subject to the act. *Id.*; see also Gov't Code § 552.003. However, if the county attorney's investigation began before any information was submitted to the grand jury, and the grand jury did not formally request or direct all of the county attorney's actions in this investigation, then the information is not deemed to be in the grand jury's constructive possession. The fact that information collected or prepared by the county attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the county attorney. Open Records Decision No. 513 (1988).

In this instance, you assert that "[t]he requested letters, documents, and reports all constitute testimony and evidence that was gathered by the prosecuting attorneys for presentation to the grand jury." Since, you represent that the submitted documents were obtained at the direction of the grand jury or pursuant to a grand jury subpoena, we conclude that they are not subject to the act.

As we conclude that the requested information is not subject to the act, we need not address your claimed exceptions at this time.<sup>2</sup> We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with the first name "Sam" being more prominent than the last name "Haddad".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH\nc

Ref: ID# 123157

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<sup>2</sup>We note that some of the information in the submitted records may also be otherwise confidential by law. Therefore, should there be a subsequent request for this information not in constructive possession of the grand jury, we advise the department to exercise caution and seek a ruling from this office concerning the records. See Gov't Code §§ 552.352; Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.

Enclosures: Submitted documents

cc: Mr. Neal W. Adams  
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(w/o enclosures):